



02 JUN 2009

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In re Application of
LIEBER et al.
Application No. 10/588,833
Filed: 09 August 2006
Attorney Docket No. H0498.7021US02

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: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition, filed 19 March 2009, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of priority to the prior-filed provisional applications set forth in the concurrently filed amendment. This is also responsive to applicant's petition under 37 CFR 1.182 to correct the PCT application number and his request for a corrected filing receipt. The petition is hereby **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 1.78(a)(5)(ii). In addition, the petition under 37 CFR 1.78(a)(5)(ii) must be accompanied by:

- (1) the reference required by 35 U.S.C. §119(e) and 37 CFR §1.78(a)(5)(ii) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(6) in that (1) a reference to the prior-filed provisional applications has been included in an amended Page 1 of the specification, as provided by 37 CFR 1.78(a)(5)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted and (3), a proper statement of unintentional delay has been submitted.

Accordingly, having found that the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §119(e) to the prior-filed provisional applications satisfies the conditions of 37 CFR 1.78(a)(6), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed provisional applications under 37 CFR 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§119(e) and 37 CFR §§1.78 (a)(4) and (a)(5) must be met. Similarly, the fact that the Filing Receipt accompanying this decision on petition will include the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing dates.

Applicant's petition under 37 CFR 1.182 to correct the PCT application number to PCT/US2005/004459 is **GRANTED**.

A corrected Filing Receipt, which includes the priority claim to the prior-filed provisional applications, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Cynthia M. Kratz at (571) 272-3286.

All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The application will be forwarded to Technology Center Art Unit 2813 for continued examination.

Bryan Lin

Bryan Lin
PCT Legal Examiner
Office of PCT Legal Administration

ATTACHMENT: Corrected Filing Receipt